

CHAPTER 64 DISTRICT OF COLUMBIA UST TRUST FUND, DISTRICT INITIATED CORRECTIVE ACTIONS AND COST RECOVERY

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6400 ESTABLISHMENT OF FUND

- 6400.1 The Director shall maintain a separate and distinct fund within the District of Columbia Treasury, for the District of Columbia Underground Storage Tank Trust Fund (District UST Trust Fund or Fund) mandated by the Act.
- 6400.2 The Director shall designate the Controller of the Department to maintain the District UST Trust Fund in compliance with the Act and the District of Columbia Fund Account Act of 1980, D.C. Code §47-371.

AUTHORITY: Unless otherwise noted, the authority for this chapter is §13 of the District of Columbia Underground Storage Tank Management Act of 1990, as amended, D.C. Law 8-242, D.C. Code §6-995.1 *et seq.* (1995 Repl. Vol.), Mayor's Order 91-160 dated October 9, 1991; and the District of Columbia Water Pollution Control Act of 1984, D.C. Law 5-188, D.C. Code 6-921 (1995 Repl. Vol.), Mayor's Order 85-152 dated September 12, 1985.

SOURCE: Final Rulemaking published at 40 DCR 7835, 7905 (November 12, 1993).

6401 FUND ACCOUNTING

- 6401.1 The Controller of the Department shall act as treasurer of the District UST Trust Fund and shall do the following:
- (a) Ensure that all monies required to be deposited into the Fund under §6402 are in fact deposited in the Fund;
 - (b) Manage all disbursements from the Fund;
 - (c) Maintain records of all deposits into and disbursements from the Trust Fund;
 - (d) Prepare financial statements for the Trust Fund at least annually in accordance with the established District Financial Management System (FMS) and generally accepted accounting principles;

- (e) Audit the UST Trust Fund at least once every two (2) years in accordance with 40 CFR §30.510(g); and
- (f) Maintain the Fund in compliance with the District Financial Management System, the requirements of this chapter and any applicable federal regulations.

6401.2 Obligations shall not be incurred against the District UST Trust Fund for any purpose by any employee of the Department without prior approval of the Program Manager of the Pesticides, Hazardous Waste Management and Underground Storage Tank Division and the Controller.

6401.3 Documentation for expenditures from the Fund shall meet the requirements of §6404.

SOURCE: Final Rulemaking published at 40 DCR 7835, 7905 (November 12, 1993).

6402 MONIES TO BE DEPOSITED IN UST TRUST FUND

6402.1 All monies collected or received in tank registration fees, inspection fees, licensure or certification fees, or other tank fees shall be deposited in the District UST Trust Fund.

6402.2 All civil penalties and costs recovered from responsible parties shall be deposited in the District UST Trust Fund.

6402.3 Costs recovered from responsible parties after the expenditure of federal grant dollars for the Leaking Underground Storage Tank Program (Federal LUST Trust Monies), shall be deposited into the Fund as program income, but shall be accounted for in compliance with applicable federal law.

6402.4 Any grants or contributions received, or monies received as reimbursement for expenditures related to the Leaking Underground Storage Tank Program, shall be deposited in the District UST Trust Fund, except as provided in §6402.5.

6402.5 Federal LUST Trust Monies (which are drawn down pursuant to a cooperative agreement with EPA and replace the expenditure of District appropriated monies) shall be maintained separate and apart from the District UST Trust Fund.

6402.6 Any interest earned on monies in the District UST Trust Fund shall be credited to the Fund.

6402.7 If, at any time, the monies in the Fund shall reach the sum of three million dollars (\$3,000,000), collection of the annual registration fee from tank owners pursuant to §5601, shall be suspended until the non-obligated balance in the Fund falls to two million seven hundred fifty thousand dollars (\$2,750,000), at which time the fee shall be reinstated.

6402.8 All other monies required to be deposited into the Fund pursuant to this section, shall continue to be deposited in the Fund without limitation, and funds in excess

of three million dollars (\$3,000,000) at the end of the fiscal year shall remain in the Fund.

SOURCE: Final Rulemaking published at 40 DCR 7835, 7906 (November 12, 1993).

6403 PERMISSIBLE DISBURSEMENTS FROM THE FUND

- 6403.1 The term corrective action, as used in this chapter, shall encompass any and all actions described in §§6202 through 6214 of this subtitle, including but not limited to, preliminary investigations, initial response actions, initial abatement, free product removal, site assessment, site assessment plans, development and implementation of corrective action plans, remediation, monitoring, and well closure.
- 6403.2 The Director may undertake corrective action where there is a release of a regulated substance into the environment, and may disburse UST Trust Fund monies for this purpose if the action is necessary to protect human health or the environment, and one or more of the following exist:
- (a) No person can be found within ninety (90) days or a shorter period, as may be necessary to protect human health or the environment, who is:
 - (1) An owner or operator;
 - (2) Subject to the corrective action rules in Chapter 62 of this subtitle; and
 - (3) Capable of proper implementation of the required corrective action; or
 - (b) A situation exists that requires immediate action by the Director to protect human health and the environment; or
 - (c) Corrective action costs at a facility exceed the amount of coverage required by the Director pursuant to Chapter 67 of this subtitle and expenditures from the Fund are necessary to ensure an effective corrective action; or
 - (d) The responsible party for the tank has failed or refused to comply with an order issued by the Director, an Administrative Law Judge, or other representative of the Mayor, that requires compliance with the corrective action rules.
- 6403.3 The Director may deem an action necessary to protect human health or the environment if any of the following conditions exist, or if a field investigation or site assessment is necessary to determine if any of the following conditions exist:
- (a) There is an accumulation of toxic, flammable or explosive vapors in dwellings, sewers, or in the surrounding area;
 - (b) There is floating free product on surface or ground-water;

- (c) There is soil, ground-water or surface water contamination above the maximum level permitted under District regulations;
 - (d) There is a spill or release of a regulated substance to the environment;
 - (e) There is a danger of migration of the release into the surface waters, ground waters, soils or air of the District of Columbia;
 - (f) The release poses a danger to plants or animals in the vicinity; or
 - (g) The release poses a danger to public health.
- 6403.4 Except as provided in §6403.5, disbursements may be made from the Fund to pay for the following:
- (a) Costs of persons or companies performing corrective actions as defined in §6403.1;
 - (b) Housing and relocation assistance for persons forced to relocate due to contamination from a LUST site;
 - (c) Costs related to cost recovery and enforcement proceedings;
 - (d) Provision of alternative water supplies;
 - (e) Exposure assessments;
 - (f) Costs of restoring property after assessment or remediation performed at the direction of UST Branch; and
 - (g) Administrative and operational costs incurred in the day-to-day administration of the UST Program including personnel costs, equipment, contract costs, supplies, training and travel. The costs shall not exceed two hundred fifty thousand dollars (\$250,000) per year during the first three years that tanks are registered, after which a new "cap" shall be established by the Director.
- 6403.5 Disbursements of costs recovered from responsible parties (based upon the expenditure of Federal LUST Trust Monies) which are deposited into the Fund, may be made only for "cost eligible activities" permitted under federal law and regulations.
- 6403.6 Disbursements from the Fund for corrective actions shall be made in accordance with the priority system set forth in §6405.
- 6403.7 Disbursements may be made to undertake corrective action where there is a release of a regulated substance as set forth in §6403.2.

SOURCE: Final Rulemaking published at 40 DCR 7835, 7907 (November 12, 1993).